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Notice of Allowability	Application No.	Applicant(s)	
	10/655,673	PHILIP, JAMES H.	
	Examiner	Art Unit	
	Robert L. Nasser	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to phone conversation of 4/29/2005.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

Robert L. Nasser
Primary Examiner
Art Unit: 3736

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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Shane Hunter on April 29, 2005

The application has been amended as follows:

In claim 1, line 15, the following has been added after the word difference: -- to determine the anesthetic state --.

In claim 1, line 16, the word "comparison" has been changed to -- anesthetic state --.

In claim 1, line 18, the first occurrence of the word "comparison" has been changed to -- anesthetic state --.

In claim 1, line 18, the second occurrence of the word "comparison" has been changed to -- anesthetic state --.

In claim 1, line 20, the word "comparison" has been changed to -- anesthetic state --.

In claim 5, line 14, the words -- to thereby determine the anesthetic state -- have been added after to word perturbation.

Claims 8 has been rewritten as follows: -- 8. A method of determining anesthetic state of a patient prior to performing a procedure on the patient, the method comprising:
sensing at least one bodily parameter of the patient that is at least partially

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indicative of anesthetic state;

providing a sensed signal indicative of the sensed at least one bodily parameter;

applying a stimulus perturbation to the patient, the stimulus perturbation being different from the procedure;

analyzing the sensed signal from a first time when the patient is reacting to the stimulus perturbation and from a second time other than the when the patient is reacting to the stimulus perturbation to produce a analysis result;

analyzing a first intensity of the stimulus perturbation and a second intensity of a stimulus, if any, provided to the patient during the second time to produce a second analysis result signal; and

determining the anesthetic state from the first and second analysis results. --

These amendments have been made to define over Marino 6500128 which shows in figure 3c a graph of the differences in responses between a first and second input and the emg induced by each input. However, Marino does not determine anesthetic state. Therefore, the claims were amended to clarify that they determine anesthetic state.

The following is an examiner's statement of reasons for allowance: Claims 1-13 define over the art in that none of the art determines anesthetic state from the physiological parameter determined in a first period when stimulus is applied and a second period when no stimulus is applied and the stimulus levels during each period.

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References such as John 3901215 or Cowings 5694939 use the change in the parameter produced at 2 stimulus levels (baseline and induced signal) but none of the art uses the stimulus levels as a parameter in determining anesthetic state.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rosenfeld 5113870 also examines induced EEG signals from periods before and during stimulation.

Bennett 5195531 and John 4557270 use EEGs to evaluate anesthesia.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
May 2, 2005



ROBERT L. NASSER
PRIMARY EXAMINER